IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5971 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUNVANTBHAI AMBALAL PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR NILESH A PANDYA for Petitioner No(s).: 1.
MR HL JANI, AGP for Respondent No(s).: 1,2.
None for Respondent No(s).: 3.

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Mr. HL Jani, Ld. AGP waives service of rule on behalf of the respondents. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2. It is the grievance of the petitioner that though his land bearing survey no. 321 situated in village Harni of Vadodara district is acquired for the purpose of constructing road between Vadodara and Halol, compensation is still to be paid. He has stated that the land was acquired sometime in the year 1997 and a consent award was passed entitling the petitioner to receive compensation not only for the land but even for the house situated on the said land.

3. The respondents have contested the petition by filing the affidavit. It is the say of the respondents that the petitioner is not entitled to receive any compensation for land bearing survey no. 311 since the said land has not been acquired and for acquiring land bearing survey no. 321 compensation of Rs.28,048/- is already paid to the petitioner. It is the say of the petitioner that, though initially proposal was made for acquisition of the lands bearing survey

no. 311 as well as survey no. 321, ultimately it was found that there was no requirement of acquiring land bearing survey no. 311. Therefore, it was left out and no compensation was paid for the said land. It is, however, the say of the petitioner that when the Panchnama was drawn, it was found that even part of survey no. 311 had been acquired by the respondents for which no compensation is paid till this date. It is further averred by the petitioner that even for the structure standing on the survey no. 321 the compensation is still not paid.

4. We have heard Mr. Nilesh Pandya, learned advocate for the petitioner and Mr. HL Jani, Ld. AGP for the respondents. We have perused the averments made in the petition as well as the annexures to the petition. Annexure-E is the award containing various statements which are forming part of the said award. The statement at page 33 of the petition contains details regarding various land acquired in this proceeding. Item no. 8 is with regard to land bearing survey no. 321. Column no. 8 thereof shows Rs.2,11,420/- is determined as compensation for the house standing on the said land. There is no answer from the respondents explaining why uptill now the said amount is not paid. They have simply denied that such building is there and no amount is required to be paid to the petitioner on that count. The award is their own document which clearly shows that there is building standing on the said land i.e. land bearing survey no. 321 for which the

compensation is determined at Rs. 2,11,420/-. When in the opinion of the Special Land Acquisition Officer this amount is awardable by way of compensation to the petitioner, the respondents cannot deny the payment thereof. So far the compensation with regard to acquisition of land bearing survey no. 311 is concerned, the compensation is yet to be paid and there is no dispute with regard to the same.

5. In view of the aforesaid, we direct the respondents that they shall calculate the final amount to be paid to the petitioner by way of compensation for the acquisition of land bearing survey no. 311 as well as the building standing on survey no. 321 together with interest payable thereon and make the actual payment on or before 15th September, 2005. This petition is, therefore, allowed. Rule made absolute with no order as to costs.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

* Pansala.